**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1812 of 2007**
**With**
**CIVIL APPLICATION No. 4940 of 2007**
**In**
**FIRST APPEAL No. 1812 of 2007**

**For Approval and Signature:**

**HONOURABLE MR. JUSTICE B.J.SHETHNA**
**HONOURABLE MR.JUSTICE AKIL KURESHI**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**NEW INDIA INSURANCE CO. LTD. - Appellant(s)**
**Versus**
**KALAVATIBEN WD/O JAGDISHCHANDRA C. SHAH & 2 - Defendant(s)**

==========

**Appearance :**
MR PV NANAVATI for Appellant(s) : 1,MR VIBHUTI NANAVATI for Appellant(s) : 1,
MR MTM HAKIM for Defendant(s) : 1 - 3.

==========

**CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA**

**and**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 10/04/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. The appeal is admitted. Learned advocate Shri Hakim appearing on Caveat, waives service of notice of appeal on behalf of the claimants. It is not necessary to secure presence of other opponents. At the joint request of learned advocates appearing for the parties, appeal is taken up for final disposal forthwith.

2. In this appeal, the appellant insurance company has challenged the judgement and award dated 12th December, 2006 passed by Motor Accident Claims Tribunal(Auxi.), Vadodara, in MACP No.2546/1997.

3. On 20th October, 1997, one Jagdishchandra Chunilal Shah was travelling on his scooter near Gorva Refinery in Baroda when he met with an accident. His Scooter collided with a tanker bearing registration no. GTT-5994 insured by the appellant insurance company. The Scooterist received fatal injuries. His widow and two children therefore, filed the above-mentioned claim petition seeking compensation of Rs.40,00,000/- from the driver, owner and insurer of the offending vehicle.

4. On the available material on record, the Claims Tribunal came to the conclusion that the driver of the tanker was solely negligent in causing the accident.

5. With respect to the question of compensation, the tribunal took into account the documentary as well as the oral evidence led by the claimants regarding the age and income of the deceased on the date of accident.

6. Before the Claims Tribunal, the claimants led evidence to establish that the deceased held degree of B.Sc. with Chemistry and he was employed as an Assistant Officer in I.P.C.L. drawing monthly salary of Rs.15,837/- on the date of accident. The claimants also led evidence to show that in addition to his monthly salary, deceased was also receiving other benefits from his employer such as gratuity, Provident Fund, Medical Leave, L.T.C. etc. The claimants also led evidence to show the projected income of the deceased in future had he not unfortunately expired on account of the accident.

7. On the basis of evidence produced on record before the Tribunal, the Claims Tribunal was pleased to believe the actual salary of the deceased on the date of accident at Rs. 16,000/-

per month. Considering the periodic increment in pay and pay revision, the tribunal assessed the prospective income of the deceased at Rs.25,417/- per month. 1/3rd thereof i.e. Rs.8,472/- was deducted for his personal expenditure, thus leaving dependency benefits of Rs.16,945/- per month for the claimants. Deceased was aged 48 years on the date of accident. Tribunal adopted multiplier of 12 and worked out dependency benefits for claimants at Rs.24,40,080/-(Rs.16,945/-x12=Rs.2,03,340/-x12). To the said sum, tribunal added Rs.25,000/- towards loss to estate and consortium, Rs.5,000/- for funeral expenses. Tribunal also assessed loss of gratuity at Rs.2,00,000/- and loss of Provident Fund at Rs.30,492/-. In all the tribunal awarded a sum of Rs.27,00,572/- to the claimants to be recovered with 7.5% interest per annum from the date of claim petition till realisation.

8. It is this award that the appellant insurance company has challenged before us in the present appeal.

9. The appeal is confined primarily on the quantum of compensation and no serious grievance is made by the appellant insurance company with respect to the conclusion of the tribunal regarding negligence of the tanker driver in causing the unfortunate accident. Even otherwise, we are in

agreement with the conclusion of the tribunal in this regard. There was ample evidence on record to establish that the deceased was driving the Scooter on correct side of the road at a moderate speed. It was at that time that the tanker driver caused the accident due to his rash and negligent driving. This was established by the claimants through an eye witness account. Significantly, driver of the tanker did not enter the witness box before the tribunal. Considering all these aspects of the matter, we have no hesitation in confirming the view of the tribunal that the tanker driver was solely negligent in causing the accident.

10. Learned advocate for the appellant insurance company however, submitted that the tribunal passed the award which is excessive. He submitted that the assessment of loss caused to the claimants is on the higher side. In view of the oral as well as the documentary evidence establishing the income of the deceased on the date of accident and the prospective increase in such income, though learned advocate for the appellant insurance company was not in a position to dislodge the findings arrived at by the tribunal regarding the dependency benefits worked out by the tribunal, he however, focused his attention primarily on the choice of multiplier adopted by the tribunal. It was urged that the tribunal gravely erred in adopting the

multiplier as high as 12 for deceased aged 48 years. It was suggested that instead, multiplier of 8 ought to have been adopted. Learned advocate for the appellate insurance company drew our attention to following recent decisions of Apex Court wherein the trend is to adopt more conservative multiplier particularly when multiplicand is quite substantial:

**1)Tamil Nadu State Transport Corporation ltd. v. S. Rajapriya and others**, 2005 ACJ 1441.

**2)U.P. State Road Transport Corporation v. Krishna Bala and others**, 2006 ACJ 2114.

**3)Managing Director, TNSTC ltd. v. K.I. Bindu and others,** (2005) 8 Supreme Court Cases 473.

11. On the other hand, learned advocate Shri Hakim appearing for the original claimants though submitted that the total award passed by the Claims Tribunal does not require any interference, at the suggestion of the Court had taken instructions from the claimants and under the instructions stated before the Court that the claimants would accept compensation on the basis of lower multiplier of 10 instead of 12 adopted by the tribunal.

12. Learned advocate Shri Hakim placed reliance on the following decisions of Apex Court in which the Apex Court has opined that for a choice of multiplier even in case of claim petition filed

under Section 166 of the Motor Vehicles Act, it would be appropriate to be guided by the Second Schedule to the Act while choosing the multiplier as provided for deciding the claim petition filed under Section 163A of the Motor Vehicles Act:

**1)Arati Bezbaruah v. Dy. Director General, Geological Survey of India and another**, 2003 ACJ 680.

**2)Kaushnuma Begum(Smt) and others v. New India Assurance Co. Ltd and others**, (2001)2 Supreme Court Cases 9.

**3)Chellammal and others v. Kailasam and another**, (2002) 11 Supreme Court Cases 387.

**4)Kanhaiyalal Kataria and others v. Mukul Chaturvedi and others**, (2005) 12 SCC 190.

**5)United India Insurance Co. Ltd and others v. Patricia Jean Mahajan and others**, (2002) 6 Supreme Court Cases 281.

**6)Supe Dei and others v. National Insurance Co. ltd. and another**, 2002 ACJ 1166.

13.Having heard the learned advocates appearing for the parties, we find that the tribunal correctly came to the conclusion that the prospective income of the deceased should be taken at Rs.25,417/- per month and that 1/3$^{rd}$ thereof should be deducted for personal expenditure of the deceased himself. Thus dependency benefits of Rs.16,945/- per month worked out by the tribunal calls for no

interference. In fact, as noted earlier, no serious attempt was made on behalf of the appellant insurance company to dislodge these findings of the tribunal also. Additionally, we also find that such conclusion was based on reliable oral as well as documentary evidence. As noted earlier, deceased was holding a degree of B.Sc. with Chemistry. He was employed in I.P.C.L. as an Assistant Officer and drawing monthly salary of Rs.15,837/- on the date of accident itself. This was evidenced by the pay slip produced by the claimants before the Claims Tribunal. In addition to his monthly salary, deceased was also drawing several other monetary benefits such as gratuity, Provident Fund, Medical Leave, L.T.C. etc. In addition to establishing the monthly income of the deceased as above, the claimants also had examined one Shri Vijaybhai Bhupatrai Vyas at exh.36 who had deposed before the tribunal that deceased would have retired with effect from 31st May, 2009 had he not suddenly died in the accident and he would have been placed in the pay scale of Rs.16,500/-(basic). It was also deposed before the tribunal that at the time of retirement, deceased would have been earning annual salary of Rs.4,18,800/-. Considering these aspects of the matter, tribunal having assessed prospective income of the deceased at Rs.25,417/-, is quite appropriate.

14. The main question however, that calls for our consideration is the appropriate choice of multiplier. It is true that in the above-mentioned decisions relied upon by learned advocate Shri Hakim for the claimants, the Apex Court has suggested that even for cases of Claims filed under Section 166 of the Motor Vehicles Act, it would be permissible to refer to the Second Schedule to the Act providing structured formula for deciding claim petitions filed under Section 163A of the Act for choice of multiplier, nevertheless, one of the relevant consideration would be the multiplicand itself. The recent trend of the Apex Court in the decisions cited by the learned advocate for the appellant insurance company does suggest more conservative choice of multiplier.

15. Considering the facts and circumstances of the case, considering the age of the deceased, considering that the deceased has another 12 years of service left, age of the claimants as also multiplicand which the tribunal has adopted and which we have approved, multiplier of 12 is certainly on the higher side and we find that appropriate multiplier of 10 should be adopted which would meet with ends of justice. The entire compensation shall have to be worked out on that basis. No serious debate was made with respect to other heads of compensation awarded by the tribunal. The tribunal awarded

compensation for loss of gratuity and Provident Fund on the basis of evidence on record. We see no reason to interfere with the same.

16. In the conclusion, the claimants would receive compensation for loss of dependency benefits at Rs.20,33,400(Rs.16,945x12x10).Total compensation with other heads remaining unchanged would be as follows :

| | |
|---|---|
| Rs.20,33,400/- | towards future dependency. |
| Rs. 25,000/- | towards loss to estate & consortium. |
| Rs. 2,00,000/- | towards gratuity. |
| Rs. 30,492/- | towards P.F. |
| Rs. 5,000/- | towards funeral expenses. |
| Rs.22,93,892/- | total compensation. |

17. Rate of interest awarded by the tribunal being discretionary and not being unreasonable, is left unchanged.

18. The appeal succeeds partially. The award shall stand modified accordingly. The claimants shall receive total compensation of Rs.22,93,892/- with interest at the rate of 7.5% per annum from the date of claim petition till realisation and proportionate costs under the modified award. The appeal is disposed of accordingly.

19. Since the appeal is disposed of, Civil Application for stay does not survive and same is also disposed of accordingly.

**(B.J. Shethna,J.)**

**(Akil Kureshi,J.)**

(raghu)